

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**YOUNG RAN CHANG DBA EDEL  
TRANS,**

**Respondent.**

**Docket No. FMCSA-2009-0200<sup>1</sup>  
(Western Service Center)**

**ORDER DENYING PETITION FOR RECONSIDERATION**

**1. Background**

On June 1, 2009, the Federal Motor Carrier Safety Administration (FMCSA) California Division Administrator served a Notice of Claim (NOC) on Young Ran Chang dba Edel Trans (Respondent).<sup>2</sup> The NOC, based on a May 14, 2009, compliance review, charged Respondent with one violation of 49 CFR 392.9a(a)/14901(d)(3), transporting household goods without the required operating authority, with a proposed civil penalty of \$25,000; and two violations of 49 CFR 395.8(i), failing to require drivers to forward original records of duty status within 13 days of completion, with a proposed civil penalty of \$820 per count. The NOC proposed a total civil penalty of \$26,640.

The NOC was served via Federal Express and was delivered to Respondent's address of record, 2315 Marshallfield Lane, #A, Redondo Beach, California, on June 3,

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<sup>1</sup> The prior case number was CA-2009-0587-US1191.

<sup>2</sup> Exhibit 1 to Field Administrator's Answer and Opposition to Petition for Reconsideration Pursuant to 49 CFR 386.64 and Memorandum of Law in Support (hereafter Claimant's Answer to Petition).

2009. Federal Express shipment tracking documentation indicates that the NOC was left at the front door of Respondent's address.<sup>3</sup>

After Respondent failed to respond to the NOC, the Field Administrator for FMCSA's Western Service Center (Claimant) served a Notice of Default and Final Agency Order (NDFAO) on July 7, 2009.<sup>4</sup> The NDFAO advised Respondent that the NOC would become the Final Agency Order in this proceeding effective July 13, 2009, with the civil penalty immediately due and payable on that date. The NDFAO was delivered by Federal Express and left at Respondent's front door on July 9, 2009.<sup>5</sup>

On July 25, 2009, Respondent served a Petition for Reconsideration of the Final Agency Order. Respondent claimed that he never personally received the NOC and did not become aware of its existence until after he received the NDFAO. According to Respondent, 2315 Marshallfield Lane, #A is his family's residence and the front door is rarely used because it is more convenient to enter the house through the side door. He alleged the front porch is checked only when a package is expected and the NOC was not expected. In essence, Respondent argued that his failure to respond to the NOC was due to excusable neglect. He did not offer any defenses to the charges and requested that he be given another chance to respond to the NOC.

In his Answer to the Petition for Reconsideration served August 28, 2009, Claimant requested that the petition be denied because: (1) Respondent defaulted by failing to timely reply to the NOC; (2) Respondent failed to demonstrate excusable

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<sup>3</sup> See Exhibit 2 to Claimant's Answer to Petition.

<sup>4</sup> See Exhibit 3 to Claimant's Answer to Petition.

<sup>5</sup> See Exhibit 4 to Claimant's Answer to Petition.

neglect; and (3) Respondent failed to set forth a meritorious defense to the claims in the NOC.

## **2. Decision**

It is undisputed that Respondent did not reply to the NOC within 30 days of service of the NOC, as required by 49 CFR 386.14(a).<sup>6</sup> Therefore, he defaulted. Under 49 CFR 386.64(b), a Notice of Default and Final Agency Order issued by a Field Administrator based on failure to timely reply to the NOC may be vacated if Respondent can demonstrate, in a timely filed Petition for Reconsideration, excusable neglect, a meritorious defense, or due diligence in seeking relief.

Claimant cited the case of *Pioneer Investment Services v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993), as establishing guidance for determining whether there has been excusable neglect in failing to comply with a regulatory deadline.<sup>7</sup> In this case, the U.S. Supreme Court concluded that the determination of whether a party's neglect is excusable "is at bottom an equitable one, taking into account all relevant circumstances surrounding the party's omission."<sup>8</sup> The Court identified four factors that should be considered in assessing the relevant circumstances: (1) the danger of prejudice to the non-moving party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the

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<sup>6</sup> The reply due date was July 6, 2009. This date was calculated by adding 30 days to the June 1, 2009, service date of the NOC, an additional five days because the NOC was served by mail, and one additional day because the 35<sup>th</sup> day (July 5) fell on a Sunday. See 49 CFR §§ 386.8(a) and (c)(3).

<sup>7</sup> Although the *Pioneer* case involved an interpretation of the Bankruptcy Rules, it has been applied in other contexts not related to bankruptcy.

<sup>8</sup> *Pioneer Investment Services v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993) (footnote omitted).

reasonable control of the moving party; and (4) whether the moving party acted in good faith.

After evaluating the relevant circumstances, I conclude that Respondent's failure to timely reply to the NOC was the result of negligence, not excusable neglect. Notwithstanding Respondent's claim that he did not personally receive a copy of the NOC until after issuance of the NDFAO, the NOC was properly served on the address where Respondent customarily receives mail, in accordance with 49 CFR 386.6(f). As there was no way Claimant could have known that Respondent routinely ignored mail left at his front door, he had no obligation to take additional steps to guarantee personal service.<sup>9</sup>

Respondent's assertion that he was not expecting to receive the NOC and thus had no reason to check the front door is somewhat disingenuous. As Claimant points out, Respondent was subject to an enforcement action one year earlier. In that instance, he was served with an NOC on May 28, 2008, three weeks after the conclusion of a May 7, 2008, compliance review.<sup>10</sup> Thus Respondent should have been aware, following the May 14, 2009, compliance review that discovered additional regulatory violations, that he would likely be the subject of another enforcement action. Under these circumstances,

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<sup>9</sup> Therefore, this case is not governed by our decision in *In the Matter of Maverick Aviation Consultants, Inc.*, Docket No. FMCSA-2007-29023, Order Vacating Notice of Default and Final Agency Order and Appointing Hearing Officer, February 4, 2008. In that case, we concluded that the Agency was obligated to serve an unclaimed NOC on the respondent by alternative means, such as by regular mail, in order to satisfy due process requirements. The NOC in the instant case was not returned unclaimed and the Agency had no reason to believe Respondent would not have opened it.

<sup>10</sup> See *In the Matter of Young Ran Chang dba Edel Trans*, Docket No. FMCSA-2008-0263.

Respondent's failure to routinely check his front door for approximately one month<sup>11</sup> was not excusable neglect. The reason for the delay was clearly within Respondent's control and Respondent's lack of attentiveness demonstrated a disregard for his obligation to responsibly operate a business in a highly regulated industry.

Vacating the Final Agency Order under these circumstances would have an adverse impact on the Agency's enforcement process by essentially rewarding carriers who do not make the effort to comply with important elements of the enforcement process simply because they operate out of a residence rather than a commercial establishment. Therefore, I conclude, after taking into account all relevant circumstances, that Respondent's neglect was not excusable. Moreover, Respondent did not present any defense to the violations alleged in the NOC, much less a meritorious one.

With respect to the issue of acting with due diligence in seeking relief, Claimant established that Respondent received delivery of the NDFAO by Federal Express on July 9, 2009. Yet Respondent did not submit a response until July 25, 2009. Therefore, I cannot conclude that Respondent acted with due diligence in seeking relief.

Accordingly, the default stands and the Notice of Claim, including the proposed civil penalty assessment, is final. The essence of a default is a failure on the part of the motor carrier or driver to participate in the proceedings when required to do so.<sup>12</sup> Having

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<sup>11</sup> The NOC was delivered on June 3, 2009, and the reply due date was July 6, 2009.

<sup>12</sup> See *In the Matter of Parcel Shipper's Express, Inc.*, Docket No. FMCSA-2000-9523, Order, May 25, 2001, at 3.

failed to participate in these proceedings within the time limit set by law, it is too late for Respondent to now be heard.<sup>13</sup>

The Petition for Reconsideration is denied. The Notice of Claim is the Final Agency Order in this proceeding.<sup>14</sup>

*It Is So Ordered.*



Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

1. 7. 10  
Date

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<sup>13</sup> *In the Matter of Kent Ness dba Ness Harvesting*, Docket Nos. FMCSA-2000-8111 and FMCSA-2002-11610, Order Denying Petitions for Reconsideration, March 15, 2002.

<sup>14</sup> The July 7, 2009, NDFAO stated that the \$26,640 civil penalty was due and payable on July 13, 2009, the date that the NOC would become the Final Agency Order. Because Respondent petitioned for reconsideration on July 25, 2009, the clock on the effective date of the Final Agency Order was not stayed by the petition. Therefore, the civil penalty is due and payable immediately. Respondent should consult the NDFAO for payment instructions.

**CERTIFICATE OF SERVICE**

This is to certify that on this 8 day of January, <sup>2010</sup>~~2009~~<sup>gm</sup>, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Jae II Chang, Owner  
Young Ran Chang dba Edel Trans  
2315 Marshallfield Lane, #A  
Redondo Beach, CA 90278

One Copy  
U.S. Mail

Andrew Chang  
188 Wilson Avenue  
Brooklyn, NY 11237

One Copy  
U.S. Mail

Nancy Jackson, Esq.  
Trial Attorney  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
Golden Hill Office Center  
12600 W. Colfax Ave., Suite B-300  
Lakewood, CO 80215

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Field Administrator  
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